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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 RONALD EUGENE JAMES,

12 Petitioner,

13 v.

14 PEOPLE OF THE STATE OF  
15 CALIFORNIA,

16 Respondent.  
17

No. 2:21-CV-1005-TLN-DMC-P

FINDINGS AND RECOMMENDATIONS

18 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of  
19 habeas corpus under 28 U.S.C. § 2254. On July 23, 2021, the Court dismissed Petitioner's  
20 petition and directed Petitioner to file an amended petition within 30 days which names the  
21 appropriate state officer as the respondent. Petitioner was warned that failure to file an amended  
22 petition may result in dismissal of this action for lack of prosecution and failure to comply with  
23 court rules and orders. See Local Rule 110. To date, Petitioner has not complied. While  
24 Petitioner filed an amended petition on July 26, 2021, the amended petition also fails to name the  
25 correct respondent.

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1           The Court must weigh five factors before imposing the harsh sanction of  
2 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.  
3 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's  
4 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)  
5 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on  
6 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,  
7 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an  
8 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.  
9 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is  
10 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,  
11 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to  
12 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,  
13 1260-61 (9th Cir. 1992).

14           Having considered these factors, and in light of Petitioner's failure to file an  
15 amended petition as directed, the Court finds that dismissal of this action is appropriate.

16           Based on the foregoing, the undersigned recommends that this action be  
17 dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and  
18 orders.

19           These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
21 after being served with these findings and recommendations, any party may file written  
22 objections with the court. Responses to objections shall be filed within 14 days after service of  
23 objections. Failure to file objections within the specified time may waive the right to appeal.  
24 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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26 Dated: July 29, 2021

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28 DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE

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